

Nancy Scott, Esq.
March 22, 2004
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Via e-mail and regular mail.

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Re: Full Circle Solutions, Inc./ReUse Technology, Inc.—Hwy. 301 Swift Creek Coal Combustion By-Product Structural Fill Site

Dear Nancy:

Further to our recent discussion, ReUse Technology, Inc. and Full Circle Solutions, Inc. are making the following proposal to settle the remaining open issues respecting the Swift Creek structural fill with your clients. These open issues are (1) what groundwater data, if any, would be relevant to determining any potential for impacts on human health and the environment, and (2) whether Full Circle should be required to sign and acknowledge a "Notice of Closed Unpermitted Solid Waste Disposal Site" rather than a "Notice of Closed Coal Ash Fill Site." If you believe there are other open items please let me know so that we can work on resolving them, too.

As to the groundwater data issue, my clients' position is that such data is not necessary to conclude that there is no potential for environmental or human health impacts resulting from the current conditions at this site. This is based on the surface water data already collected, the availability of a public water pipeline adjacent to the site, and the location of the site more than one mile away (across a swamp) from potential downgradient groundwater receptors. Given these factors, obtaining groundwater data at the site is not necessary to conclude that there are no potential off-site impacts on human health or the environment.

More fundamentally, if there were a perceived need to collect groundwater to evaluate potential off-site impacts the data that are collected should be useful. Data that would be obtained by drilling a monitoring well at the very edge of the structural fill next to the pipe (the location being designated by the Solid Waste Section) would not be useful. This is because even if the data showed groundwater impacts essentially within

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the fill itself, it would not provide any information about any potential downgradient off-site impacts. Accordingly, my clients do not believe they should be ordered to obtain such data without also being ordered to obtain data at some distance downgradient from the fill, i.e., the data proposed to be collected under their February 11 proposal.

In order to reach a settlement of the groundwater question my clients want to have the Solid Waste Section supply a written statement of reasons why groundwater data are necessary, and why my clients' February 11, 2004 proposal to install a monitoring well approximately 130 feet down gradient from the project was not acceptable. My clients then want an opportunity to respond to the Section's reasoning at a meeting with DENR's management and counsel. The meeting would be with you and anyone else from the Attorney General's Office who wishes to be present, with the Solid Waste Section Staff and Management, with Dexter Matthews, with the DENR General Counsel, and Secretary Ross or his Deputy.

At this meeting my clients would have an opportunity to respond to Solid Waste Section's reasons and provide the Agency's upper management with their own views. The Agency's management would then tell us whether my clients should obtain groundwater data. If DENR decides that groundwater data are necessary, DENR can specify either both wells, or only the well described in the February 11 proposal.

We would agree on forms of consent orders prior to the meeting which embody both potential approaches. These orders would contain all necessary drawings and specifications to identify precisely where the well(s) will be placed, how the well(s) will be constructed, when samples will be taken, what analysis will be performed, etc.

Immediately following the meeting (or as soon thereafter as the decision is made) the parties would execute the order that reflected the decision of Secretary Ross or his designee. In both forms of consent order, the Agency would also agree to issue a "Notice of Closed Coal Ash Fill Site" for its closure letter, rather than a "Notice of Closed Unpermitted Solid Waste Disposal Site." This was the compromise reflected in DENR's August 19, 2002 letter to Mr. Waldrop, and the Agency should stand by it.

Please let me hear from you after you have presented this settlement proposal to your clients.

Very truly yours,

Moore & Van Allen PLLC


William A. White